

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANTHONY FRAGUA,

Petitioner,

v.

1:16-cv-01405-RB-LF

MATTHEW ELWELL,¹ Director,
Sandoval County Detention Center,

Respondent.

**AMENDED ORDER GRANTING MOTION TO EXPEDITE
AND FOR IMMEDIATE RELEASE**

THIS MATTER comes before the Court on petitioner Anthony Fragua's Motion to Expedite and for Release, filed April 14, 17. Doc. 9. Respondent filed his response to the motion on April 17, 2017 (Doc. 11) as a sealed document² and again on May 1, 2017, as an unsealed document (Doc. 14). Fragua has not filed a reply, and none is necessary. Having reviewed the submissions of the parties, the recording of Fragua's criminal trial, and the relevant law, I find that the motion is well taken and will be GRANTED.

In his motion to expedite, Fragua asks the court to expedite its ruling and release him pending determination of this case. Doc. 9. In his response, respondent does not address the substance of Fragua's request that this matter be expedited, nor does he take any position on whether Fragua should be released pending the Court's determination of the petition.

In a separate Proposed Findings and Recommended Disposition filed concurrently with this order, I recommend to the Court that Fragua be released from custody because the Pueblo of

¹ Matthew Elwell, the new Director of the Sandoval County Detention Center, *see* Doc. 14 at 1, is automatically substituted for his predecessor, Al Casamento, as the respondent in this suit. FED. R. CIV. P. 25(d). The Court is filing this amended order only to reflect this change.

² The Court ordered the Clerk to unseal Document 11 on May 11, 2017. Doc. 17.

Jemez denied Fragua his right under ICRA to request a trial by jury (Doc. 18). Based on the record in this case, the representations in the motion to expedite and for release, respondent's lack of substantive opposition to that motion, and my recommendation that Fragua's petition be granted, I find that Fragua is neither a flight risk nor a danger to the community.

IT IS THEREFORE ORDERED that Fragua's Motion to Expedite and for Release (Doc. 9) is GRANTED. Respondent Matthew Elwell is ordered to release Fragua immediately on his own recognizance. Pending the Court's final order on Fragua's petition, Fragua's travel is restricted to the State of New Mexico; he must avoid all contact with the victim in this case; he must not possess a firearm, destructive device, or any other dangerous weapon; he must not consume alcohol at all; he must not use or unlawfully possess a narcotic drug or other controlled substance defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner; and he must remain in contact with his attorney and report as required for any proceedings, if necessary, in this Court. If the Court ultimately denies Fragua's petition, Fragua will be required to return to custody to complete his sentence.



Laura Fashing
United States Magistrate Judge